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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS JEFFERY TODD,

Defendant and Appellant.

C062018

(Super. Ct. Nos.  
CRF082269, CRF090948 )

A jury found defendant Thomas Jeffery Todd guilty of possession of a firearm by a felon, possession of a short-barreled shotgun, and possession of ammunition by a felon.<sup>1</sup> The trial court suspended imposition of sentence and granted defendant three years' probation on various terms and conditions on April 3, 2009. In so doing, it imposed a \$150 "conviction

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<sup>1</sup> These crimes were charged in Sutter County case No. CRF082269. Both of the contentions on appeal pertain to the fines imposed in this case. There are no claims of error raised here which pertain to consolidated case No. CRF090948.

assessment," a \$200 restitution fine pursuant to Penal Code<sup>2</sup> section 1202.4, subdivision (b) (section 1202.4(b)), and imposed and stayed a \$200 probation revocation restitution fine pursuant to section 1202.44.

On July 8, 2009, when the court terminated defendant's probation and sentenced him to state prison for a term of 16 months,<sup>3</sup> the court "order[ed] one restitution fine of \$200 in this case, pursuant to [section] 1202.4[(b)]," announced it was imposing a \$150 conviction assessment (\$50 per conviction), and a \$200 restitution fine pursuant to section 1202.45, which would be stayed pending defendant's successful completion of parole.

On appeal, defendant contends the court erred in imposing the restitution fine and conviction assessment at sentencing. Neither contention has merit.

#### DISCUSSION

##### I

##### *Fines*

First, defendant argues the court improperly imposed a "second" section 1202.4(b) restitution fine at sentencing. He argues the trial court violated *People v. Chambers* (1998)

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<sup>2</sup> Further unspecified statutory references are to the Penal Code.

<sup>3</sup> In the same proceeding, defendant was sentenced in case No. CRF090948 to 16 months for second degree burglary, to be served concurrently with his sentence in case No. CRF082269.

65 Cal.App.4th 819, by "re-impos[ing] a second" \$200 restitution fine when it sentenced him to prison.

The People agree that *Chambers* prohibits a court from imposing a restitution fine different from the one it originally ordered when it placed defendant on probation. In *Chambers*, the defendant entered a no contest plea to first degree burglary. The trial court granted probation and, as a condition of probation, imposed a \$200 section 1202.4(b) restitution fine. The trial court later revoked probation and sentenced the defendant to state prison while imposing a \$500 restitution fine pursuant to the same section.<sup>4</sup> (*People v. Chambers, supra*, 65 Cal.App.4th at p. 821.) The court in *Chambers* determined that the \$500 restitution fine was unauthorized, declaring that there was "no statutory authority justifying the second restitution fine because . . . the first restitution fine remained in force despite the revocation of probation." (*Id.* at p. 823; see also *People v. Arata* (2004) 118 Cal.App.4th 195, 201-203 [trial court erred when it imposed second \$800 § 1202.4 restitution fine when it had already imposed \$600 § 1202.4

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<sup>4</sup> In this case, the trial court was careful to clarify that defendant's probation was *not* being revoked, but was terminated at his request. Had defendant's probation been revoked, the trial court would have been required to lift the stay of the probation revocation restitution fine imposed pursuant to section 1202.44 when it granted defendant probation, and that fine would then have become due and payable. (*People v. Guiffre* (2008) 167 Cal.App.4th 430, 434-435.)

restitution fine at time defendant was granted probation; second restitution fine stricken from judgment].)

However, the People respond -- and we agree -- that the court here did not err in the manner criticized in *Chambers*. The restitution fine it imposed at sentencing in July 2009 is in the same amount as that imposed at the granting of probation in April 2009. Defendant points to nothing in the record which shows he made payments to reduce the fee while he was on probation, and the abstract of judgment reflects a single section 1202.4(b) restitution fine of \$200 in case No. CRF082269. Thus, a "second" section 1202.4(b) restitution fine was not imposed when defendant was sentenced to prison. Had the court done so, it would effectively require defendant to pay \$400 in restitution fines, rather than \$200, and that would have been error. But we conclude from the court's oral pronouncement at sentencing that it was "order[ing] one *restitution fine* of \$200 in this case, pursuant to [section] 1202.4" (italics added) and that it was merely (and correctly) restating its imposition of the same restitution fine imposed when probation was granted in April 2009. Defendant's argument is frivolous.

Defendant's second contention pertains to the "conviction assessment" imposed at sentencing. Both parties assume the \$50 "criminal conviction assessment" imposed by the court per conviction represents the sum of a \$20 court security fee per

conviction, pursuant to section 1465.8,<sup>5</sup> *plus* a \$30 court facilities assessment per conviction, pursuant to Government Code section 70373, subdivision (a)(1).<sup>6</sup> So it appears. When the trial court granted defendant probation, it imposed one each of these two fines for each of the three convictions, for a total of \$150; when it sentenced him to prison, it announced it was doing the same. Citing *Chambers*, defendant contends these fines survived the cessation of his probation, and the court erred in imposing a second series of fines when he was sentenced to prison.

As with the restitution fine, we agree that the imposition of a second set of fines at sentencing would have been error, but in spite of the fact that the court referred to two fines in a shorthand way as "conviction fines" the record does not

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<sup>5</sup> Section 1465.8 states: "To ensure and maintain adequate funding for court security, a fee of twenty dollars (\$20) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code."

<sup>6</sup> Government Code section 70373, subdivision (a)(1) provides: "(a)(1) To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463 of the Penal Code, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The assessment shall be imposed in the amount of thirty dollars (\$30) for each misdemeanor or felony and in the amount of thirty-five dollars (\$35) for each infraction."

suggest the court did anything other than repeat at sentencing the fines it had imposed when probation was granted.

II

*Presentence Credits*

The recent amendments to Penal Code section 4019 do not operate to modify defendant's entitlement to credit, as he was required to register as a sex offender, committed for a serious or violent felony, and/or had a prior conviction(s) for a serious or violent felony. (Pen. Code, § 4019, subds. (b)(1), (2) & (c)(1), (2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.)

DISPOSITION

The judgment is affirmed.

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ROBIE, J.

We concur:

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SIMS, Acting P. J.

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BUTZ, J.